

**Federal Defenders
OF NEW YORK, INC.**

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September 13, 2023

By ECF

MEMO ENDORSED

Honorable Jessica G. L. Clarke
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Mark Henderson*, 22 Cr. 307 (JGLC)

Dear Judge Clarke:

I write to respectfully request that the Court modify Mr. Henderson's bail conditions by reducing the level of location monitoring from "home detention" to "curfew," with hours to be set by Pretrial Services. Mr. Henderson's supervising Pretrial Services officer – Marlon Ovalles – supports the request; the government presumably opposes. (I have requested its position but have not yet heard back.) A conference in this matter is currently scheduled for September 14, 2023, at 11:00 a.m.

I. Background

Mark Henderson is a 45-year old U.S. citizen with no prior criminal history. He was arrested on June 9, 2023, and charged with possession with the intent to distribute narcotics, in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(B). Mr. Henderson was presented before Magistrate Judge Wang on June 12, 2023, and released on conditions including a \$50,000 personal recognizance bond cosigned by two financially responsible persons, and home detention enforced by electronic monitoring. On June 29, 2023, I requested that Mr. Henderson's level of monitoring be reduced to a curfew to allow him to pursue freelance work as a chef. *See* Dkt. No. 6. Magistrate Judge Cave denied the application without prejudice to a future application. *See id.*

Mr. Henderson has now been on pre-trial release for three months, and has been wholly compliant with all the conditions of release. He has secured employment, and currently works full time as a chef at a restaurant in Queens.

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II. Discussion

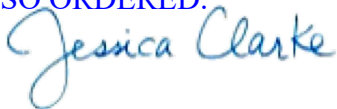
Under the Bail Reform Act, 18 U.S.C. § 3141 *et seq.*, courts are instructed to release defendants under the *least restrictive* conditions that will reasonably assure a person's appearance in court and the safety of the community. *See* 18 U.S.C. § 3142(c)(1)(B). A court may modify the conditions of release at any time. *Id.* at §3142(c)(3).

The analysis under the Bail Reform Act is forward-looking; that is, as of September 13, 2023, what are the least restrictive conditions that can be imposed in this case? *See, e.g., United States v. Madoff*, 586 F. Supp. 2d 240, 250 (S.D.N.Y. 2009) ("The statute, by its nature, is always looking forward. To be sure, the Court should consider past behavior in assessing the likelihood of prohibited behavior in the future, but the Government needs to show that there is a serious risk that these potential harms exist going forward.").

Here, Mr. Henderson has demonstrated by his exemplary behavior over a three-month period that home detention is more restrictive than necessary to reasonably assure his presence in court or the safety of the community. A condition of curfew, while less restrictive than home detention, still represents a significant curtailment of liberty, and there is no evidence to support the assertion that a more restrictive condition is necessary at this time. As noted above, Pretrial Services supports the modification request.

Thank you for your consideration of this request.

Application GRANTED. Defendant Mark Henderson's conditions of bail are modified from "home detention" to "curfew," with hours to be set by Pretrial Services and travel restriction from SDNY/EDNY/DNJ to SDNY/EDNY only. All other conditions of bail shall remain in effect. The Clerk of Court is respectfully is directed to terminate the letter motion at ECF No. 11. SO ORDERED.



JESSICA G. L. CLARKE
United States District Judge

Dated: September 15, 2023
New York, New York

Respectfully submitted,

/s/ _____

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cc: Thomas John Wright, Esq., by ECF and e-mail
Marlon Ovalles, U.S. Pretrial Services Officer, by e-mail